IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of Decision: 11th July, 1996.

CRIMINAL APPEAL NO. 355 OF 1986

For Approval and Signature:

THE HON'BLE MR. JUSTICE H.R. SHELAT.

1. Whether Reporters of Local Papers may be allowed to see the Judgment ? No.

2. To be referred to the Reporter or not ? No.

3. Whether Their Lordships wish to see the fair copy of Judgment ? No.

4. Whether this case involves substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ? No.

5. Whether it is to be circulated to the Civil Judge? No.

The State of Gujarat : Appellant.

Versus

Dhulabhai Tulsibhai Kumbhar. : Respondent.

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Shri S.T.Mehta, Addl. Public Prosecutor for the appellant State.

Shri P.B. Bhatt, Advocate for the respondent.(Appointed)

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Coram: H.R. Shelat,J.

(11-7-1996)

ORAL JUDGMENT:

This appeal has been directed against the judgment dated 30th October 1985, rendered in Criminal Case No. 5520 of 1984, by the then learned Judicial Magistrate (F.C.) at Bulsar, acquitting the respondent of the offences under Section 279, 304-A, 337, 338 of the Indian Penal Code and Section 112 - 116 of the Motor Vehicles Act.

2. The case of the prosecution in short is that Premilaben, the wife of Ukadbhai Sukhabhai and Kashiben Ratanji, the mother-in-law of Ukadbhai Sukhabhai, had gone to the market for

necessary purchases at Valsad. After the marketing was over they wanted to go to their village Lilapur by a S.T. bus. They had therefore gone to the S.T. Bus Station, Bulsar and they were waiting for the bus standing between platforms No. 4 and 5 near to the railings. The bus for Dharampur via Lilapur was to leave Bulsar at 13.50 hours. For the purpose of parking the bus near the platform, the respondent was taking the bus GRU 6092 to reverse. While taking the bus to reverse he was not careful in driving the bus, as a result he hit Kashiben and Premilaben waiting for the bus, and knocked them down seriously injured. Kashiben succumbed to the injuries, while Premilaben fortunately survived but had to undergo a long medical treatment in the hospital. The complaint against the respondent was lodged before the police station at Bulsar setting the police investigation to motion. After usual investigation the police filed the chargesheet against the respondent for the abovesaid offences before the Court of the then Judicial Magistrate (F.C.) at Bulsar. The learned Judicial Magistrate hearing the parties recorded the plea. The respondent pleaded not guilty and claimed to be tried. The prosecution then led necessary evidence. Considering the evidence before him the learned Magistrate reached the conclusion that prosecution had failed to establish the charge beyond reasonable doubt. He therefore acquitted the respondent, but he found that the prosecution had succeeded in establishing the charge of the offence under Section 89 of the Motor Vehicles Act (old Act) and sentenced him to a fine of Rs.25/-, in default, simple imprisonment for 5 days. It is against that order of acquittal only, the present appeal has been preferred by the State.

3. Mr. Mehta, the learned APP assailing the judgment and order of the lower court submitted that the learned Judge did not appreciate the evidence in right perspective. The appreciation of the evidence was against the sound principles of law which could be termed arbitrary and perverse. The witnesses examined had categorically stated about the negligent driving of the respondent, but the learned Judge below overlooked that aspect and interpreting illogically, reached a conclusion against the prosecution which in this appeal requires to be upset. Mr. Bhatt, the learned Advocate representing the respondent submitted that the learned Magistrate had committed no error either of law or fact, and the judgment being quite in consonance with law, there was no reason to interfere with the order of the acquittal.

4. On perusal of the evidence on record, I am unable to agree with Mr. Mehta, the learned APP. Before I dissect the merits of the evidence on record, it is necessary to mention what in law `negligence' and `rashness' mean. `Negligence' means a breach of duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of the human affairs would do or doing

something which a prudent and reasonable man would not do. A bare negligence involving the risk of injury is punishable criminally though nobody is actually hurt by it. `Rashness' means primarily an over-hasty act and it is opposed to a deliberate act; and that acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precautions to prevent their happening. The imputability arises from acting despite the consciousness. On such legal position if the evidence is dissected, I see no justification to upset the finding of the learned Judicial Magistrate. I will now in brief refer the evidence on record.

5. Ukad Sukha (Exh.9) is the son-in-law of deceased Kashiben and husband of Premilaben. He does not have any personal knowledge because he was at his shop and after the incident Thakorebhai Prabhubhai informed him. He therefore cannot say about rash and negligent act on the part of the respondent. Thakorebhai Prabhubhai Solanki (Exh. 12) is no doubt the eye-witness. He has seen the incident being happened. According to him both Kashiben and Premilaben along with other passengers were waiting for the bus near the railings of the platform No.4 and at that time the respondent took the bus to reverse at the excessive speed as a result the bus hit both Kashiben and Premilaben and they were knocked down seriously injured. Nothing further can be gathered from the evidence of Thakorebhai. Gosai Lallubhai (Exh. 13) rushed to the place of incident after the incident was over. He could see that two women were injured and the railings were found bent. Premilaben Ukadbhai the injured has been examined at Exh. 17. According to her, when she and her mother were waiting for the bus, the respondent brought the bus to the platform taking it to reverse at a high speed, as a result she and her mother were knocked down seriously injured. She also states nothing further in this regard. Kaderbux Yaramohamad Makrani who was at that time on duty at the S.T. bus depot also likewise made the statements. Dolatsinh Udehsinh, the conductor on duty has been examined at Exh. 24. What can be deduced from his evidence is that he was whistling remaining on the back and according to his whistle the respondent receiving the signal was taking the bus to the platform, but the respondent was driving at the excessive speed. Thus the evidence on record shows that the respondent was driving the bus at the excessive speed. Nothing further has been brought out by the prosecution. The question now arises for examination is whether driving the vehicle at the excessive speed can be termed as rash and negligent act on the part of the driver.

6. It was contended on behalf of the State that in this case two women were knocked down as a result of which one died and that would show that the driver, who was speedy, was rash and negligent. The contention cannot be accepted. The mere fact

that the bus knocked down two persons injured cannot by itself be enough to make the driver liable under Section 304A of the Indian Penal Code. To bring home an offence under the Section, it must be proved beyond reasonable doubt that the death of the victim was the direct result of the rash and negligent driving on the part of the accused. For such view, a reference of a case of State vs. Hari Singh - 1969 Rajasthan 86 may be made. At this stage, I think it proper to refer a decision of the Madras High Court in the case of Re. Natarajan alias Natesan vs. State AIR 1966 Madras 357, wherein it is held that merely because prosecution proves that the car left the load or met accident there can be no presumption of rash and negligent driving requiring accused to prove that he was not driving the vehicle in rash and negligent manner. Simply because in the case on hand accident occured, it cannot be said that the accused was speedy and high speed is nothing but rash and negligent act.

7. There was a little divagation owing to the peculiar submissions. I will now switch over to the moot question viz. driving the vehicle at the high speed. Whether driving the vehicle at the excessive speed would amount to rash and negligent driving is to be examined. The prosecution has to establish a direct nexus between the death of a person or injury caused to the person and the rash and negligent act of the accused. The remote cause of death or injury cannot have the impact against the accused. To describe the vehicle involved in accident as being driven at the excessive or high speed is certainly ambiguous. It is required to be elucidated as to what the witness telling about high speed meant. A question about high speed came to be considered before the Supreme Court in the case of Mohanta Lal Saha vs.The State of West Bengal 1968 Accident Claim Tribunal 124, wherein it is observed that if every one before the court says that the vehicle was driven at the high speed and the accident happened, that by itself would not lead to the conclusion that the driver of the vehicle was rash and negligent. In order to conclude rash and negligent driving on the ground of high speed, it is necessary and incumbent upon the prosecution to elucidate about the high speed putting necessary question to the witness because every one may have different notion qua high speed. For one man, a speed of 10 to 20 miles would be high, while to others even a speed of 30 miles or more may appear reasonable or high. Hence, simply because the witnesses before the Court make the statement about the high speed of the vehicle involved in the accident, that would not by itself establish rash and negligent act on the part of the driver of the vehicle unless it is elucidated what he meant about the high speed. I carefully perused the evidence on record and no where found the elucidation having been got made, and when that is lacking on record, simply on the evidence of the witnesses that the vehicle was being driven at the excessive speed, I cannot jump to the conclusion that the respondent was rash and

negligent; and fasten him with the criminal liability. There is no other evidence going to show the rash and negligent act on the part of the respondent which the prosecution is bound to establish as per the law made hereinabove clear. When there is no other evidence and the solitary evidence about the high speed, is for the reasons stated just now, not sufficient, the learned Judicial Magistrate was perfectly right in acquitting the respondent. There is therefore no error on his part either of fact or of law. The appreciation of the evidence made is quite just and proper and I see no justification to disturb the judgment and order of the lower Court acquitting the respondent.

8. For the aforesaid reasons, the appeal being devoid of merits is hereby dismissed.

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TRUE COPY

(R.M. Ravindran)
Private Secretary
to the Hon'ble Judge
High Court of Gujarat
Ahmedabad